FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No.671/2004
(Dashrath Budhaji Wakde Vs. Nirmal Balram Biswas)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. G.N. Khanzode, Adv. for appellant.
Mr. C.S. Kaptan, Adv. for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 23rd July, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant. A suit was filed by the plaintiff/landlord for eviction of the defendant. The plaintiff had issued a notice under Section 106 of the Transfer of Property Act on 13/12/1994, thereby intimating the defendant that the tenancy had terminated with effect from 31/12/1994. The plaintiff had also pleaded that the defendant was in arrears of rent for a particular period and the defendant had also committed some acts of nuisance.

The defendant filed his written statement and denied the claim of the plaintiff. According to the defendant, the notice issued under Section 106 of the Transfer of Property Act was not a clear 15 days' notice and hence was not a valid one. It was further pleaded by the defendant that the defendant was not in arrears of rent and the pleadings about the acts of nuisance were also denied.

The trial Court, after considering the evidence

tendered by the parties, came to a conclusion that the landlord had failed to prove that the tenant was in arrears of rent since January, 1991. The Court further held that the tenancy was validly terminated with effect from January, 1995. The trial Court, however, refused to grant a decree for eviction on the ground that the plaintiff had filed the suit for eviction on the ground of default made by the tenant in payment of rent and since the plaintiff had failed to prove the aforesaid fact, the plaintiff was not entitled to a decree for eviction. Consequently, the suit filed by the plaintiff for eviction was dismissed by the trial Court. Hence, though the trial Court held that the notice exh.42 issued under Section 106 of the Transfer of Property Act was a valid one and the tenancy of the defendant was rightly terminated, the plaintiff was held to be not entitled to seek possession of the property.

In an appeal filed by the plaintiff, the District Judge, Gadchiroli, by the judgment dated 17/6/2004, confirmed the findings about the validity of the notice and held that the quit notice dated 13/12/1994 was legal and proper. The appellate Court held that the plaintiff could not be non-suited and refused a decree of eviction on the ground that he had failed to prove that the tenant was in arrears of rent for certain period. The appellate Court, therefore, granted decree of eviction in favour of the plaintiff as the plaintiff had proved that the quit notice dated 13/12/1994 was legal and proper. The findings recorded by the appellate Court are challenged in the instant second appeal.

I have perused the judgment passed by the

appellate Court. The appellate Court was justified in granting a decree for eviction as the plaintiff had proved the legality and validity of the notice dated 13/12/1994. The notice was issued by the plaintiff to the defendant on 13/12/1994 and the defendant had also admitted the receipt of the same in his evidence. The notice recited that the tenancy had terminated with effect from 31/12/1994 and hence there was clear 15 days' notice as required under Section 106(3) of the Transfer of Property Act. The approach of the first appellate Court in recording the aforesaid finding and granting a decree for eviction is perfectly legal and justified.

No substantial question of law arises in this second appeal. Hence, the same is dismissed with no order as to costs.

JUDGE

RMP